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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/580,732	05/25/2006	Iain James Campbell	F3341(C)	8700

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UNILEVER PATENT GROUP  
800 SYLVAN AVENUE  
AG West S. Wing  
ENGLEWOOD CLIFFS, NJ 07632-3100

EXAMINER
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CARTAGENA, MELVIN A

ART UNIT	PAPER NUMBER
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3754

NOTIFICATION DATE	DELIVERY MODE
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06/24/2011

ELECTRONIC

**Please find below and/or attached an Office communication concerning this application or proceeding.**

The time period for reply, if any, is set in the attached communication.

Notice of the Office communication was sent electronically on above-indicated "Notification Date" to the following e-mail address(es):

patentgroupus@unilever.com

<b>Office Action Summary</b>	<b>Application No.</b> 10/580,732	<b>Applicant(s)</b> CAMPBELL ET AL.	
	<b>Examiner</b> MELVIN CARTAGENA	<b>Art Unit</b> 3754	

**-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --**

**Period for Reply**

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

**Status**

- 1) ☒ Responsive to communication(s) filed on 11/22/10.
- 2a) ☐ This action is **FINAL**.                      2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

**Disposition of Claims**

- 4) ☒ Claim(s) 1-4 and 6-14 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1-4 and 6-14 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

**Application Papers**

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

**Priority under 35 U.S.C. § 119**

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All    b) ☐ Some \*    c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

**Attachment(s)**

- |   |   |
|---|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892)         | 4) <input type="checkbox"/> Interview Summary (PTO-413)           |
| 2) <input type="checkbox"/> Notice of Draftperson's Patent Drawing Review (PTO-948) | Paper No(s)/Mail Date. _____                                      |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO/SB/08)         | 5) <input type="checkbox"/> Notice of Informal Patent Application |
| Paper No(s)/Mail Date _____   | 6) <input type="checkbox"/> Other: _____                          |

## **DETAILED ACTION**

### ***Continued Examination Under 37 CFR 1.114***

1. A request for continued examination under 37 CFR 1.114, including the fee set forth in 37 CFR 1.17(e), was filed in this application after final rejection. Since this application is eligible for continued examination under 37 CFR 1.114, and the fee set forth in 37 CFR 1.17(e) has been timely paid, the finality of the previous Office action has been withdrawn pursuant to 37 CFR 1.114. Applicant's submission filed on November 22, 2010 has been entered.

### ***Claim Rejections - 35 USC § 103***

2. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

3. Claims 1-4, 12 and 13 are rejected under 35 U.S.C. 103(a) as being unpatentable over US 5,361,941 to Parekh et al. in view of US 2003/0134024 A1 to Malone et al.

Parekh show a method of filling a chilled food product into a compartment 14 of a container 6, where the container has another compartment 16 filled with a propellant. The two compartments are gas tightly separated by a moveable wall 4 and placed in an insulated jacket 39.

Parekh show al claimed features as discussed above except for using the dispenser to dispense a frozen aerated food product containing a freezing point depressant with a molecular weight less than or equal to -8 Fat +330, mixed with an ice cream product. Malone show a frozen

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aerated food product containing a freezing point depressant in the range of 25-37% and between 2-12% fat by weight that satisfies the above equation, see column 2, lines 51-58 and column 3, lines 9-11. It would have been obvious to a person with ordinary skill in the art at the time the invention was made to dispense the frozen aerated food product of Malone in the device of Parekh to prevent the propellant from coming in contact with the product and alter the desired characteristics of the ice cream product.

4. Claims 6-11 and 14 are rejected under 35 U.S.C. 103(a) as being unpatentable over US 5,361,941 to Parekh et al. as modify by US 2003/0134024 A1 to Malone et al. as applied to claim 1 above, and further in view of US 6,553,779 to Boyer et al.

The Parekh-Malone combination show all claimed features as discussed above, except for a casing made of eutectic plates, the working pressure range of the propellant and the how long the thermal insulation preserves the product at a desired temperature. Boyer shows a frozen food dispensing machine as seen in Fig. 1, using a eutectic material surrounding the frozen food product. It would have been obvious to a person with ordinary skill in the art at the time the invention was made to use eutectic plates surrounding the frozen product to maintain the vessel at a nearly constant temperature as taught by Boyer.

In reference to the working pressure range being between 5 bar and 12 bar and the type and amount of thermal insulation, it would have been obvious to one having ordinary skill in the art at the time the invention was made to use an suitable pressure according to the viscosity and desired flow rate of the product and enough thermal insulation to prevent the food product from spoiling, since it has been held that discovering an optimum value of a result effective variable involves only routine skill in the art. *In re Boesch*, 617 F. 2d 272, 205 USPQ 215 (CCPA 1980)

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***Response to Amendment***

5. The Declaration under 37 CFR 1.132 filed November 22, 2010 is insufficient to overcome the rejection of claims 1-4 and 6-14 based upon the new grounds of rejection as set forth in the Office action above.

6. Applicant's arguments with respect to claims 1-4 and 6-17 have been considered but are moot in view of the new ground(s) of rejection.

***Conclusion***

Any inquiry concerning this communication or earlier communications from the examiner should be directed to MELVIN CARTAGENA whose telephone number is (571)272-4924. The examiner can normally be reached on M-TH (8:30AM to 7:00 PM).

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Kevin P. Shaver can be reached on (571) 272-4720. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

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Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

/M. A. C./  
Examiner, Art Unit 3754

/KEVIN P. SHAVER/  
Supervisory Patent Examiner, Art Unit 3754